

No. 15964

VOL. 3085

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**United States  
Court of Appeals  
for the Ninth Circuit**

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DAN O. HOYE, as Controller of the City of Los Angeles and DAN O. HOYE,

Appellants,

vs.

UNITED STATES OF AMERICA and ROBERT A. RIDDELL, Director of Internal Revenue,

Appellees.

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**Transcript of Record**

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**Appeal from the United States District Court for the  
Southern District of California  
Central Division**

**FILED**

AUG - 4 1958



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DAN O. HOYE, as Controller of the City of Los  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

### For Appellant:

ROGER ARNEBERGH,

City Attorney;

BOURKE JONES,

Assistant City Attorney;

ALFRED E. ROGERS,

Assistant City Attorney;

T. PAUL MOODY,

Deputy City Attorney,

400 City Hall,

Los Angeles 12, California.

### For Appellee:

CHARLES K. RICE,

Assistant U. S. Attorney General,

Tax Division, Dept. of Justice,

Washington 25, D. C.;

LAUGHLIN E. WATERS,

United States Attorney;

EDWARD R. McHALE,

Assistant United States Attorney,

Chief, Tax Division;

ROBERT H. WYSHAK,

Assistant United States Attorney,

808 Federal Building,

Los Angeles 12, California. [1]





In the District Court of the United States for the Southern District of California, Central Division.

No. 1065—57T

DAN O. HOYE, as Controller of the City of Los Angeles, and DAN. O. HOYE,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, ROBERT A. RIDDELL, Director of Internal Revenue, and RICHARD A. WESTBERG,

Defendants.

COMPLAINT TO QUASH A "NOTICE OF LEVY" AND "FINAL DEMAND" SERVED ON A MUNICIPAL CORPORATION BY THE DIRECTOR OF INTERNAL REVENUE

Come now the plaintiffs and for cause of action allege:

I.

That Dan O. Hoyer, the plaintiff herein, is the duly elected, qualified and acting Controller of the City of Los Angeles, California.

II.

That Robert A. Riddell is the duly appointed, qualified and acting Director of Internal Revenue in and for the Sixth District, California.

## III.

That on or about the 19th day of March, 1957, the defendant, [2\*] Robert A. Riddell, acting for and on behalf of the United States of America, and acting in his capacity of Director of Internal Revenue, Sixth District, California, did cause to be served upon the plaintiff herein a document entitled "Notice of Levy," a copy of which is attached hereto as Exhibit "A" and hereby made a part hereof by reference as though fully set forth herein, which said document claimed the sum of \$155.93 to be due and owing to the defendants herein, the United States of America and Robert A. Riddell, Director of Internal Revenue, from the defendant, Richard A. Westberg.

## IV.

That on said March 19, 1957, the City of Los Angeles was indebted to Richard A. Westberg in the sum of \$158.78; that said sum was then payable to said Richard A. Westberg; that the plaintiff, Dan O. Hoyer, as Controller of the City of Los Angeles, did thereupon hold said money because of the claim of the defendants the United States of America and Robert A. Riddell, Director of Internal Revenue.

## V.

That on or about the 25th day of June, 1957, the defendant Robert A. Riddell, Director of Internal Revenue, Sixth District, California, acting for and on behalf of the defendant the United States of

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

America, did serve upon the plaintiff herein a document entitled "Final Demand," a copy of which is attached hereto as Exhibit "B" and hereby made a part hereof by reference as though fully set forth herein; that said "Final Demand" by its terms requires that the plaintiff herein pay over to the defendant, Robert A. Riddell, Director of Internal Revenue, the sum of \$155.93; said "Final Demand" further states that it is based upon and pursuant to Section 6332 of the Internal Revenue Code of 1954; that the plaintiff herein has not paid said sum of \$155.93 or any other sum to any of the defendants herein; that said payment is not made because the [3] laws of the State of California, to wit, Section 710 of the California Code of Civil Procedure, requires that the plaintiff herein shall pay over monies owed by the City of Los Angeles to any person other than the person to whom the money is owing only upon the filing of an authenticated abstract of judgment of a court showing that the person is entitled thereto, together with an affidavit showing the exact amount then due; that the defendants Robert A. Riddell and the United States of America and neither of them have filed with the plaintiff herein any authenticated abstract of judgment or affidavit as required by said Section 710 of the California Code of Civil Procedure; that no judgment has been recovered by the defendant the United States of America or Robert A. Riddell, Director of Internal Revenue, against the defendant Richard A. Westberg.

## VI.

Plaintiff does not make any claim to said money in his individual capacity, nor in his capacity as Controller of the City of Los Angeles, except that the plaintiff does claim an interest therein solely for the purpose of paying the money to the proper parties legally entitled thereto, so that he may be discharged from his liability as custodian of the money and his duty as a public official to pay out only to the proper party; that the enforcement of the "Notice of Levy" and "Final Demand" will cause plaintiff to breach his duty as a public official and cause him to be personally liable for any money paid to the defendants the United States of America and Robert A. Riddell, Director of Internal Revenue.

Wherefore, plaintiff prays for an order of this court determining that the plaintiff herein is not bound by the "Notice of Levy" or "Final Demand" served upon him by the Director of Internal Revenue as hereinabove set forth; nor any of his employees or deputies; that the "Notice of Levy" and "Final Demand" be quashed; that the court [4] determine that the plaintiff herein is only bound to pay over to the defendants the United States of America, and Robert A. Riddell, Director of Internal Revenue, monies due other persons upon the filing with the plaintiff by said defendant of an authenticated abstract of judgment of a court of competent jurisdiction, together with an affidavit as provided in and required by the California Code of Civil Procedure, Section 710, and for such other and further order as the court deems just in the premises.

ROGER ARNEBERGH,  
City Attorney;

BOURKE JONES,  
Assistant City Attorney;

ALFRED E. ROGERS,  
Assistant City Attorney;

By /s/ T. PAUL MOODY,  
Deputy City Attorney,  
Attorneys for Plaintiffs. [5]

EXHIBIT A

FCCF

Form 668-A

U. S. Treasury Department  
Internal Revenue Service

Notice of Levy

To: Controller, City of Los Angeles, City Hall, Los Angeles, Calif.

You are hereby notified that there is now due, owing, and unpaid from Richard A. Westberg, 7419 Reseda Blvd., Reseda, Calif., to the United States of America the sum of One Hundred Fifty-Five & 93 cents (\$155.93) for Internal Revenue taxes, to wit:

Period and Type of Tax: 1955 Income.

Date of Assessment: 8-15-56.



Account No: OP 8-1500288/56L

Unpaid Balance.....\$150.63

Statutory Additions.....\$ 5.30

Total Amount Due.....\$155.93

You are further notified that demand has been made upon the taxpayer for the amount set forth herein, and that such amount is still due, owing, and unpaid from this taxpayer, and that the lien provided for by Section 6321, Internal Revenue Code of 1954, now exists upon all property or rights to property belonging to the aforesaid taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability.

Dated at Van Nuys, Calif., this 8th day of March, 1957.

R. A. RIDDELL,

District Director of Internal  
Revenue,

By /s/ A. D. ALLEN,

Group Supervisor.

Certificate of Service

I hereby certify that this levy was served by handing a copy of this notice of levy to [Stamped: Received March 19, 1957; Controller, City of Los Angeles], on March 19, 1957 at 2 p.m.

/s/ W. G. LUNDQUIST,  
Director of Internal Revenue.

EXHIBIT B

Form 668-C

U. S. Treasury Department  
Internal Revenue Service

Final Demand

District: Los Angeles.

Date: June 20, 1957.

To: Controller, City of Los Angeles, City Hall, Los Angeles, Calif.

On March 19, 1957, there was served upon you a levy, by leaving with Controller, City of Los Angeles at Los Angeles, Calif., a notice of levy, on all property, rights to property, moneys, credits and bank deposits then in your possession, to the credit of, belonging to, or owned by Richard A. Westberg of 7419 Reseda Blvd., Reseda, who was at the time, and still is, indebted to the United States of Amer-

Account No: OP 8-1500288/56L

Unpaid Balance.....\$150.63

Statutory Additions.....\$ 5.30

Total Amount Due.....\$155.93

You are further notified that demand has been made upon the taxpayer for the amount set forth herein, and that such amount is still due, owing, and unpaid from this taxpayer, and that the lien provided for by Section 6321, Internal Revenue Code of 1954, now exists upon all property or rights to property belonging to the aforesaid taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability.

Dated at Van Nuys, Calif., this 8th day of March, 1957.

R. A. RIDDELL,

District Director of Internal  
Revenue,

By /s/ A. D. ALLEN,

Group Supervisor.



Certificate of Service

I hereby certify that this levy was served by handing a copy of this notice of levy to [Stamped: Received March 19, 1957; Controller, City of Los Angeles], on March 19, 1957 at 2 p.m.

/s/ W. G. LUNDQUIST,  
Director of Internal Revenue.

EXHIBIT B

Form 668-C

U. S. Treasury Department  
Internal Revenue Service

Final Demand

District: Los Angeles.

Date: June 20, 1957.

To: Controller, City of Los Angeles, City Hall, Los Angeles, Calif.

On March 19, 1957, there was served upon you a levy, by leaving with Controller, City of Los Angeles at Los Angeles, Calif., a notice of levy, on all property, rights to property, moneys, credits and bank deposits then in your possession, to the credit of, belonging to, or owned by Richard A. Westberg of 7419 Reseda Blvd., Reseda, who was at the time, and still is, indebted to the United States of Amer-

ica for unpaid internal revenue taxes, together with statutory additions which had accrued thereon at the time of levy, and which amounted at that time to the sum of \$155.93. Demand was made upon you for the amount set forth in the notice of levy, or for such lesser sum as you may have been indebted to the taxpayer, which demand has not been met.

Your attention is invited to the provisions of Section 6332, Internal Revenue Code of 1954, as follows:

Sec. 6332. Surrender of Property Subject to Levy.

(a) Requirement—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (for discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Penalty for Violation—Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with

costs and interest on such sum at the rate of 6 per cent per annum from the date of such levy.

(c) Person Defined—The term “person,” as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

Demand is again made for the amount set forth in the notice of levy, \$155.93, or for such lesser sum as you may have been indebted to the taxpayer at the time the notice of levy was served. If you comply with this final demand within five days from its service, no action will be taken to enforce the provisions of section 6332 of the Internal Revenue Code. If, however, this demand is not complied with within five days from the date of its service, it will be deemed to be finally refused by you and proceedings may be instituted by the United States as authorized by the statute quoted above.

R. A. RIDDELL,

District Director of Internal  
Revenue,

By /s/ A. D. ALLEN,

Group Supervisor.

### Certificate of Service

I hereby certify that this Final Demand was served by handing a copy thereof to: [Stamped:

Received June 25, 1957, Controller, City of Los Angeles].

Date: 6/25/57.

/s/ [Indistinguishable]

Collection Officer.

Duly verified.

[Endorsed]: Filed September 10, 1957. [7]

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[Title of District Court and Cause.]

NOTICE OF MOTION TO INTERVENE AND  
MOTION TO INTERVENE OF THE  
UNITED STATES OF AMERICA

To the Plaintiff, Dan O. Hoye, and to Roger Arnebergh, Bourke Jones, Alfred E. Rogers, T. Paul Moody, His Attorneys:

You and Each of You will please take notice that on Monday, November 18, 1957, at 10:00 a.m., or as soon thereafter as counsel can be heard, in Courtroom No. 6, before the Honorable Ernest A. Tolin, in the Post Office and Courthouse Building, 312 North Spring Street, Los Angeles 12, California, the United States of America, by and through its attorneys herein mentioned, will move the Court for permission to intervene upon the following grounds:

(1) Your movant is a corporation sovereign and body politic, has not consented to be sued in an action such as here brought by the plaintiff against the United States of America and [9] is not subject to the jurisdiction of this Court as a defendant therein.

(2) The intervention herein applied for is directed by the Attorney General of the United States and authorized and sanctioned by a delegate of the Secretary of the Treasury of the United States.

(3) The United States of America has an interest in the matter being litigated in this suit and is a necessary and proper party to a complete determination thereof.

(4) The facts with respect to your movant's interest in this cause are set forth in its proposed complaint in intervention herein, which movant asks leave to file, and which is submitted herewith and by reference made a part hereof.

(5) No previous application for the relief herein asked has been made to any Court or Judge.

Wherefore, your movant prays that an order be made granting the United States of America leave to intervene in this action as against the plaintiff, and to file and serve its said complaint in intervention herein, and directing that service of said complaint in intervention on the plaintiff may be made by mailing a copy of said complaint and summons thereon to his attorneys.

Dated: November 8, 1957.

LAUGHLIN E. WATERS,  
United States Attorney;

EDWARD R. McHALE,  
Asst. United States Attorney,  
Chief, Tax Division;

ROBERT H. WYSHAK,

Asst. United States Attorney;

/s/ ROBERT H. WYSHAK,

Attorneys for United States  
of America. [10]United States District Court for the Southern  
District of California, Central Division

No. 1065—57T Civil

DAN O. HOYE, as Controller of the City of Los  
Angeles, and DAN O. HOYE,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, ROBERT A. RIDDELL, Director of Internal Revenue, and RICHARD A. WESTBERG,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff in Intervention,

vs.

DAN. O. HOYE,

Defendant in Intervention.

COMPLAINT IN INTERVENTION FOR PENALTY UNDER SECTION 6332(b) OF THE  
1954 INTERNAL REVENUE CODE

Comes Now the United States of America, after leave of Court having been obtained, and files this, its complaint in intervention herein, and alleges:



I.

The United States of America is a sovereign and a corporate body politic.

II.

Jurisdiction of this Court lies under 28 U.S.C. §1340, [11] §1345 and 26 U.S.C. §7401, §6332.

III.

This action in intervention is directed by the Attorney General of the United States and is authorized and sanctioned by a delegate of the Secretary of the Treasury of the United States.

IV.

The defendant in intervention Dan O. Hoyer is the duly elected, qualified and acting Controller of the City of Los Angeles, California.

V.

On the 15th day of August, 1956, a delegate of the Secretary of the Treasury of the United States assessed federal income taxes for the calendar year 1955, and penalties and interest thereon in the aggregate amount of \$150.63 against the defendant and taxpayer Richard A. Westberg. On or about August 20, 1956, notice thereof was given to, and demand for the payment of said assessed taxes, penalties and interest was made upon said taxpayer; but notwithstanding notice and demand, no part of said tax, penalties and interest has been paid and

the whole remains assessed, outstanding and unpaid.

## VI.

On March 19, 1957, a delegate of the Secretary of the Treasury of the United States, pursuant to the provisions of the Internal Revenue Code of 1954, duly served upon the defendant in intervention a Notice of Levy upon all property or rights to property belonging to the aforesaid taxpayer. Said Notice of Levy demanded surrender by the defendant in intervention of all property, rights to property, monies, credits, and bank deposits in his possession and belonging to this taxpayer and all sums or other obligations owing from him to this taxpayer. Said Notice of Levy made demand upon the defendant in intervention for the sum of \$155.93 from the amount then owing from said defendant in [12] intervention to the taxpayer Richard A. Westberg.

## VII.

Plaintiff in intervention is informed and believes and based on such information and belief alleges that at the time of the service of said Notice of Levy upon the said defendant in intervention, said defendant in intervention owed the taxpayer Richard A. Westberg the sum of \$158.78.

## VIII.

On June 25, 1957, a delegate of the Secretary of the Treasury of the United States duly served upon the defendant in intervention a Final Demand for the amount set forth in the Notice of Levy, \$155.93.



## IX.

Plaintiff is informed and believes and based on such information and belief alleges that at the time of the service of said Final Demand upon the said defendant in intervention, said defendant in intervention owed the taxpayer Richard A. Westberg the sum of \$158.78.

## X.

The defendant in intervention at the time of the service of said Notice of Levy and at the time of the service of said Final Demand as hereinabove set forth, refused and at all times herein mentioned, has refused and now refuses to pay over or surrender the property, rights to property, monies, credits, and sums of money or other obligations owing from him to the taxpayer, which were in his possession as aforesaid at the time of service of said Notice of Levy and Final Demand upon him.

Wherefore, plaintiff in intervention prays for judgment against the defendant in intervention in his own person and estate for the sum of \$155.93, together with costs and interest on such sum at the rate of six per centum per annum from the date of levy, and for the plaintiff in intervention's costs to be taxed by the [13] Clerk of this Court and for such other and further relief as the Court may deem meet and proper in the premises.

LAUGHLIN E. WATERS,  
United States Attorney;

*Dan O. Hoyer, etc., vs.*

EDWARD R. McHALE,  
Asst. United States Attorney,  
Chief, Tax Division;

ROBERT H. WYSHAK,  
Asst. United States Attorney;

/s/ ROBERT H. WYSHAK,  
Attorneys for United States of America, Plaintiff  
in Intervention.

Affidavit of service by mail attached.

[Endorsed]: Filed November 8, 1957. [14]

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[Title of District Court and Cause.]

NOTICE OF MOTIONS TO DISMISS AND  
MOTIONS TO DISMISS AND SUPPORT-  
ING MEMORANDUM

To the Plaintiff, Dan O. Hoyer, and to Roger Arne-  
Bergh, Bourke Jones, Alfred E. Rogers, T.  
Paul Moody, His Attorneys:

You and Each of You will please take notice that  
on Monday, November 18, 1957, at 10:00 a.m., or as  
soon thereafter as counsel can be heard, in Court-  
room No. 6, before the Honorable Ernest A. Tolin,  
in the Post Office and Courthouse Building, 312  
North Spring Street, Los Angeles 12, California, the  
defendants, United States of America and Robert  
A. Riddell, by and through their attorneys herein  
mentioned, will make the following motions to dis-  
miss the above action:

(1) The defendant United States of America moves the Court to dismiss the action for lack of jurisdiction over the United States, because the United States has not consented to be sued in an action [16] of this nature.

(2) The defendant Robert A. Riddell moves the Court to dismiss the action as to the defendant Robert A. Riddell inasmuch as he is not a proper party defendant, since the tax lien in question is not owned by him but rather by the United States of America.

(3) The defendants, United States of America and Robert A. Riddell, move the Court to dismiss the action for lack of jurisdiction over the subject matter since the cause of action is one in the nature of injunctive relief and specifically prohibited by §7421 of Title 26 U.S.C., the Internal Revenue Code of 1954.

(4) The defendants, United States of America and Robert A. Riddell, move the Court to dismiss the action for lack of jurisdiction over the subject matter since the cause of action is in the nature of an action for declaratory relief and specifically within the prohibition of §2201, Title 28 U.S.C.

Dated: November 8, 1957.

LAUGHLIN E. WATERS,  
United States Attorney;

EDWARD R. McHALE,  
Asst. United States Attorney,  
Chief, Tax Division;

ROBERT H. WYSHAK,

Asst. United States Attorney;

/s/ ROBERT H. WYSHAK,

Attorneys for Defendants United States of America and Robert A. Riddell.

Affidavit of service by mail attached.

[Endorsed]: Filed November 8, 1957. [17]

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[Title of District Court and Cause.]ORDER PERMITTING INTERVENTION  
BY THE UNITED STATES OF AMERICA

The motion of the United States of America for permission to intervene herein having come on for hearing and leave having been asked to file a complaint in intervention herein, and good cause appearing therefor:

It Is Hereby Ordered that leave be granted to file said complaint in intervention; that said United States of America be permitted to intervene in the action against the plaintiff; and that service of said complaint in intervention on the plaintiff may [29] be made by mailing a copy of said complaint and summons thereon to his attorneys.

Dated: This 6th day of February, 1957.

/s/ ERNEST A. TOLIN,

United States District Judge.

Approved as to Form this 18 day of November,  
1957.

ROGER ARNEBERGH,  
BOURKE JONES,  
ALFRED E. ROGERS,  
T. PAUL MOODY,

/s/ T. PAUL MOODY,  
Attorneys for Plaintiff.

[Endorsed]: Filed February 6, 1958. [30]

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[Title of District Court and Cause.]

MINUTES OF THE COURT  
FEBRUARY 6, 1958

Present: Hon. Ernest A. Tolin, District Judge;  
Counsel for Plaintiffs: No Appearance.  
Counsel for Defendant: No Appearance.

Proceedings:

Court grants defendant's motion to dismiss heretofore taken under submission.

Court grants defendant's motion to intervene and signs order at this time.

Counsel for defendant to prepare formal order granting defendant's motion to dismiss.

Counsel notified.

JOHN A. CHILDRESS,  
Clerk,

By /s/ WAYNE E. PAYNE,  
Deputy Clerk. [31]

[Title of District Court and Cause.]

AMENDED COMPLAINT IN INTERVENTION  
FOR PENALTY AND FOR FORECLOSURE OF INTERNAL REVENUE TAX  
LIEN AGAINST PERSONAL PROPERTY

Comes Now the United States of America and files this, its amended complaint in intervention, pursuant to Rule 15 (a) of the Federal Rules of Civil Procedure, and for its first cause of action against Dan O. Hoyer, defendant in intervention, alleges as follows:

First Cause of Action

1. The United States of America is a sovereign and a [37] corporate body politic.

2. Jurisdiction of this Court lies under 28 U.S.C. §§1340, 1345, and 26 U.S.C. §§7401, 7403, 6332.

3. This action in intervention is directed by the Attorney General of the United States and is authorized and sanctioned by a delegate of the Secretary of the Treasury of the United States.

4. The defendant in intervention Dan O. Hoyer is the duly elected, qualified and acting Controller of the City of Los Angeles, California.

5. On the 15th day of August, 1956, a delegate of the Secretary of the Treasury of the United States assessed federal income taxes for the calendar year 1955, and penalties and interest thereon in the aggregate amount of \$150.63 against the taxpayer



Richard A. Westberg. On or about August 20, 1956, notice thereof was given to, and demand for the payment of said assessed taxes, penalties and interest was made upon said taxpayer; but notwithstanding notice and demand, no part of said tax, penalties and interest has been paid and the whole remains assessed, outstanding and unpaid. Interest accrues on said tax liability at the daily rate of \$.02 until paid.

6. On March 19, 1957, a delegate of the Secretary of the Treasury of the United States, pursuant to the provisions of the Internal Revenue Code of 1954, duly served upon the defendant in intervention a Notice of Levy upon all property or rights to property belonging to the aforesaid taxpayer. Said Notice of Levy demanded surrender by the defendant in intervention of all property, rights to property, monies, credits, and bank deposits in his possession and belonging to this taxpayer and all sums or other obligations owing from him to this taxpayer. Said Notice of Levy made demand upon the defendant in intervention for the sum of \$155.93 from the amount then owing from said defendant in intervention to the taxpayer Richard A. Westberg. [38]

7. Plaintiff in intervention is informed and believes and based on such information and belief alleges that at the time of the service of said Notice of Levy upon the said defendant in intervention, said defendant in intervention owed the taxpayer Richard A. Westberg the sum of \$158.78.

8. On June 25, 1957, a delegate of the Secretary of the Treasury of the United States duly served upon the defendant in intervention a Final Demand for the amount set forth in the Notice of Levy, \$155.93.

9. Plaintiff in intervention is informed and believes and based on such information and belief alleges that at the time of the service of said Final Demand upon the said defendant in intervention, said defendant in intervention owed the taxpayer Richard A. Westberg the sum of \$158.78.

10. The defendant in intervention at the time of the service of said Notice of Levy and at the time of the service of said Final Demand as hereinabove set forth, refused and at all times herein mentioned, has refused and now refuses to pay over or surrender the property, rights to property, monies, credits, and sums of money or other obligations owing from him to the taxpayer, which were in his possession as aforesaid at the time of service of said Notice of Levy and Final Demand upon him.

#### Second Cause of Action

For a Second Cause of Action Against the Defendants in Intervention Dan O. Hoye, City of Los Angeles and Richard A. Westberg, Plaintiff in Intervention Alleges as Follows:

11. Plaintiff in intervention repeats and realleges paragraphs 1 through 5 of the First Cause of Action of this amended complaint in intervention,



and incorporates them herein as if fully set forth. [39]

12. The defendant in intervention City of Los Angeles is a municipal corporation in and of the State of California.

13. Plaintiff in intervention is informed and believes and based on such information and belief alleges that at the time of said assessment, the defendant in intervention City of Los Angeles owed the taxpayer and defendant in intervention, Richard A. Westberg, the sum of \$158.78 as wages for services which had been rendered to the City of Los Angeles.

14. Under the internal revenue laws, the tax liability of the defendant in intervention Richard A. Westberg, set out hereinabove in paragraph 5, became a lien upon all property and rights to property of said defendant in intervention, including said debt of \$158.78, on the date of said assessment.

Wherefore, plaintiff in intervention prays for judgment as follows:

1. Against the defendant in intervention Dan O. Hoyer in his own person and estate for the sum of \$155.93, together with costs and interest on such sum at the rate of 6 per centum per annum from the date of levy; and

2. For foreclosure of its tax lien against the debt owed the taxpayer and defendant in interven-

tion, Richard A. Westberg, in the sum of \$158.78;  
and

3. For its costs to be taxed by the Clerk of this  
Court; and

4. For such other and further relief as the  
Court may deem meet and proper in the premises.

LAUGHLIN E. WATERS,  
U. S. Attorney;

EDWARD R. McHALE,  
Asst. U. S. Attorney,  
Chief, Tax Division;

ROBERT H. WYSHAK,  
Asst. U. S. Attorney;

/s/ ROBERT H. WYSHAK,  
Attorneys for Defendant and Plaintiff in Interven-  
tion, United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed February 24, 1958. [40]

United States District Court for the Southern  
District for California, Central Division

No. 1065-57 T

DAN O. HOYE, as Controller of the City of Los  
Angeles, and DAN O. HOYE,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, ROB-  
ERT A. RIDDELL, Director of Internal Reve-  
nue, and RICHARD A. WESTBERG,

Defendants.

### ORDER GRANTING MOTION TO DISMISS

Good Cause Appearing Therefor, it is hereby ordered that the complaint in the above-entitled action may be, and it hereby is, dismissed for lack of jurisdiction of the subject matter and for lack of jurisdiction over the defendants, United States of America and Robert A. Riddell; however, this is not a final order under Fed. R. Civ. P. 54(b), since the United States of America has filed its complaint in intervention.

Dated: March 10, 1958.

/s/ ERNEST A. TOLIN,

United States District Judge.

Lodged February 26, 1958.

[Endorsed]: Filed and entered March 10, 1958.

[Title of District Court and Cause.]

### NOTICE OF ORDER

Roger Arnebergh, Esq.,  
400 City Hall,  
Los Angeles 12, Calif.;

Robert H. Wyshak, Esq.,  
808 Federal Bldg.,  
Los Angeles 12, Calif.

Re: Hoyer, etc. v. U. S. A., et al., No. 1065-  
57-T.

You are hereby notified that order granting motion to dismiss in the above-entitled case has been entered this day in the docket.

Dated: March 10, 1958.

CLERK, U. S. DISTRICT  
COURT,

By C. A. SIMMONS,  
Deputy Clerk. [44]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the United States of America, and Robert A. Riddell, Director of Internal Revenue, Defendants, and to Laughlin E. Waters, United States Attorney, Edward R. McHale, Assistant United States Attorney, Chief Tax Division, and Rob-

ert H. Wyshak, Assistant United States Attorney, Their Attorneys:

You and Each of You Will Please Take Notice, that the Plaintiff Dan O. Hoyer, as Controller of the City of Los Angeles, and Dan O. Hoyer, Plaintiffs above named, do hereby give notice of and do hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the Order Granting Motion to Dismiss entered in the above-entitled action on March 10, 1958. [45]

Dated: 14th day of March, 1958.

ROGER ARNEBERGH,  
City Attorney;

BOURKE JONES,  
Assistant City Attorney;

ALFRED E. ROGERS,  
Assistant City Attorney;

By /s/ T. PAUL MOODY,  
Deputy City Attorney.

Affidavit of service by mail attached.

[Endorsed]: Filed March 17, 1958. [46]

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[Title of District Court and Cause.]

## STIPULATION FOR COSTS ON APPEAL

Know All Men by These Presents, That Fidelity and Deposit Company of Maryland, a Corporation

organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto United States of America, Robert A. Riddell, Director of Internal Revenue, and Richard A. Westberg in the penal sum of Two Hundred and Fifty and No/100 (\$250.00) Dollars, to be paid to said Defendants, his successors, assigns or legal representatives, for which payment well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors and assigns firmly by these presents.

The Condition of the Above Obligation Is Such, that whereas, Dan O. Hoye, as Controller of the city of Los Angeles, and Dan O. Hoye is about to take an appeal to the United States Court of Appeals for the Ninth Circuit from an order dated March 10, 1958, granting a motion to dismiss the Plaintiff's complaint by the United States District Court for the Southern District of California, Central Division, in the above-entitled case.

Now, Therefore, if the above-named appellant shall prosecute said appeal to effect and answer all costs which may be adjudged against him if he fails to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

It Is Further Agreed by the Surety, that in case of default or contumacy on the part of the Principal or Surety, the Court may, upon notice to them



of not less than ten days, proceed summarily and render judgment against them, or either of them, in accordance with their obligation and award execution thereon.

Signed, Sealed, and dated this 17th day of March, 1958.

FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND,

By /s/ ROBERT HECHT,  
Attorney in Fact.

Examined and recommended for approval as provided in Rule 8.

/s/ T. PAUL MOODY,  
Attorney.

Approved this 17th day of March, 1958.

JOHN A. CHILDRESS,  
Clerk, U. S. District Court, Southern District of  
California.

State of California,  
County of Los Angeles—ss.

On this 17th day of March, 1958, before me, R. G. Cicciarelli, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Robert Hecht known to me to be the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the Corporation that executed

the within instrument, and acknowledged to me that he subscribed the name of the Fidelity and Deposit Company of Maryland thereto and his own name as Attorney-in-Fact.

[Seal]      /s/ R. G. CICCARELLI,  
Notary Public in and for the County of Los An-  
geles, State of California.

[Endorsed]: Filed March 17, 1958.

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[Title of District Court and Cause.]

### CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 54, inclusive, containing the original:

Complaint.

Notice of Motion to Intervene and Motion to Intervene of the United States of America.

Notice of Motions to Dismiss and Motions to Dismiss and Supporting Memorandum.

Points and Authorities in opposition to motions to dismiss by Defendants the United States of America and Robert A. Riddell, Di-



rector of Internal Revenue and Motion to file Complaint in Intervention.

Order permitting intervention by the United States of America.

Minute Order of 2/6/58 re: granting motion to dismiss and granting motion to intervene.

Complaint in Intervention.

Amended Complaint in Intervention.

Order Granting Motion to Dismiss.

(Copy) Notice of order granting Motion to Dismiss.

Notice of Appeal.

(Copy) Bond for Costs on Appeal.

Designation of Contents of Record on Appeal.

Additional Designation of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Dated: Los Angeles, California, this 3rd day of April, 1958.

JOHN A. CHILDRESS,  
Clerk,

[Seal] By /s/ WM. A. WHITE,  
Deputy Clerk.

[Endorsed]: No. 15964. United States Court of Appeals for the Ninth Circuit. Dan O. Hoye, as Controller of the City of Los Angeles and Dan O. Hoye, Appellants, vs. United States of America and Robert A. Riddell, Director of Internal Revenue, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: April 7, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States District Court for the Southern  
District of California, Central District  
No. 1065-57 T

DAN O. HOYE, as Controller of the City of Los  
Angeles, and DAN O. HOYE,  
Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA, et al.,  
Defendants-Appellees.

STATEMENT OF POINTS ON APPEAL  
[F.R.C.P. Rule 75 (d)]

Upon Appeal from the United States District  
Court, Southern District of California, Central  
Division.

Plaintiffs-Appellants herein present the points  
upon which they claim the District Court erred:

(1) The court erred in dismissing the Com-  
plaint of Plaintiffs-Appellants on the alleged  
grounds of lack of jurisdiction of the subject mat-  
ter and for lack of jurisdiction over the defendants.

ROGER ARNEBERGH,  
City Attorney;  
BOURKE JONES,  
Assistant City Attorney;  
ALFRED E. ROGERS,  
Assistant City Attorney,

By /s/ T. PAUL MOODY,  
Deputy City Attorney.

Affidavit of service by mail attached.

[Endorsed]: Filed April 17, 1958.

